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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

OCT 23 2008

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF
MOUNT TIPTON WATER CO., INC. FOR AN
EMERGENCY RATE INCREASE

DOCKET NO. W-02105A-08-0262

DECISION NO. 70559OPINION AND ORDER

DATE OF HEARING:

August 25, 2008

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Sarah N. Harpring¹

APPEARANCES:

Mr. John Janik, President, on behalf of Mount Tipton
Water Co., Inc.;² and

Mr. Wesley VanCleve, Staff Attorney, Legal Division,
on behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

On May 23, 2008, Mount Tipton Water Co., Inc. ("Mount Tipton") filed with the Arizona Corporation Commission ("Commission") an application requesting emergency rate relief to increase its cash flow so as to cover operating expenses and increase water availability to its customers. Mount Tipton specifically requested an emergency rate increase of \$10.00 per customer per month.

On June 13, 2008, a Procedural Order was issued scheduling a hearing in this matter for July 25, 2008, and establishing other procedural deadlines. Among these was a requirement that Mount Tipton file, by July 14, 2008, a certification that public notice had been mailed and posted in accordance with the Procedural Order.

¹ Administrative Law Judge Teena Wolfe also attended the evidentiary hearing.

² Although intervention was granted to Tom Albertson, Helga Abbott, and Jeanne Kay Greenfield by Procedural Order issued on August 20, 2008, and all three were provided with notice that intervention had been granted on the day the Procedural Order was issued, none of them appeared at the evidentiary hearing. Nor did two late applicants for intervention—Michael Johnson and Sylvia McClory. Mr. Johnson's and Ms. McClory's Motions to Intervene were denied by Procedural Order issued August 26, 2008.

1 On July 11, 2008, Commission Utilities Division Staff ("Staff") filed its Staff Report,
2 recommending approval of the emergency rate application, with conditions.

3 Mount Tipton did not file a certification regarding public notice by July 14, 2008.

4 On July 21, 2008, the Hearing Division received a fax stating that the Procedural Order had
5 not been received by Mount Tipton; requesting a three-week extension to comply with the posting
6 and mailing deadlines therein; and providing information regarding Mount Tipton's anticipated
7 inability to obtain a bond or letter of credit as Staff had recommended in the Staff Report.

8 On July 21, 2008, at the request of the Hearing Division, a telephonic procedural conference
9 was held in this matter. Mount Tipton appeared through John Janik, President, and Karen Carter,
10 Treasurer. Staff appeared through counsel. During the procedural conference, Mr. Janik and Ms.
11 Carter stated that Mount Tipton had not received the Procedural Order in the mail; that Mount Tipton
12 had only become aware of the July 25, 2008, hearing date after having received the Staff Report; and
13 that Mount Tipton had not yet provided any public notice of the hearing date either through mail or
14 posting. As a result, it was determined that the hearing scheduled for July 25, 2008, would be
15 vacated, and that another hearing date and associated procedural deadlines would be established.

16 On July 21, 2008, a Procedural Order was issued vacating the July 25, 2008, hearing;
17 scheduling a hearing for August 25, 2008; and establishing associated procedural requirements and
18 deadlines.

19 On August 7 and 12, 2008, comments on the application were filed by Mount Tipton
20 customers.

21 On August 12, 2008, Mount Tipton filed a letter stating that notice had been mailed to its
22 customers on August 4, 2008.

23 On August 13, 2008, Motions to Intervene were filed by Tom Albertson and Helga Abbott,
24 both of whom identified themselves as residential customers of Mount Tipton and residents of Dolan
25 Springs.

26 On August 15, 2008, a Motion to Intervene was filed by Jeanne Kay Greenfield, who also
27 identified herself as a residential customer of Mount Tipton and a resident of Dolan Springs.

28 On August 18 and 19, 2008, eight customer comments were filed.

1 On August 20, 2008, an Arizona Department of Environmental Quality ("ADEQ") sanitary
2 survey report dated August 19, 2008, was filed. The ADEQ sanitary survey report showed that
3 Mount Tipton was out of compliance both as to physical facilities and as to monitoring and
4 reporting.³

5 On August 20, 2008, a Procedural Order was issued granting intervention to Mr. Albertson,
6 Ms. Abbott, and Ms. Greenfield. To ensure that actual notice was provided prior to the hearing date,
7 the Procedural Order was sent to Ms. Abbott, Ms. Greenfield, and Mount Tipton by fax and to Mr.
8 Albertson by e-mail.

9 On August 21, 2008, three days after the deadline for Motions to Intervene, a Motion to
10 Intervene was filed by Sylvia McClory, who identified herself as a residential customer of Mount
11 Tipton and a resident of Dolan Springs, Arizona.

12 On August 21, 2008, a customer comment was also filed.

13 On August 22, 2008, four days after the deadline for Motions to Intervene, a Motion to
14 Intervene was filed by Michael Johnson, who identified himself as a residential customer of Mount
15 Tipton and a resident of Phoenix, Arizona.

16 On August 25, 2008, a full evidentiary hearing was held before a duly authorized
17 Administrative Law Judge of the Commission at the Commission's offices in Phoenix, Arizona.
18 Mount Tipton appeared through Mr. Janik, and Staff appeared through counsel. Mr. Albertson, Ms.
19 Abbott, and Ms. Greenfield failed to appear. Ms. McClory and Mr. Johnson also failed to appear.
20 No members of the public attended. Mount Tipton and Staff both presented evidence and testimony.
21 During the hearing, Mount Tipton was directed to file three late-filed exhibits: (1) a complete copy
22 of an April 2008 letter from Pete Byers, Mohave County Supervisor, a partial copy of which was
23 admitted as Exhibit A-4; (2) documentation showing Mount Tipton's actual tax liability; and (3) a
24 balance sheet and income statement. Mount Tipton was directed to file the late-filed exhibits by
25 September 8, 2008, and Staff was instructed to file any response to the late-filed exhibits by
26 September 16, 2008.

27 _____
28 ³ The report includes approximately five pages of major deficiencies, slightly more than one page of minor
deficiencies, and approximately three pages of recommendations.

On August 26, 2008, a Procedural Order was issued that, among other things,⁴ memorialized Mount Tipton's late-filed exhibit responsibilities and Staff's opportunity to respond thereto and denied the Motions to Intervene of Ms. McClory and Mr. Johnson.

On September 9, 2008, Mount Tipton filed a complete copy of the April 2008 letter from Mr. Byers, documentation showing Mount Tipton's tax liability for five parcels, and a "Custom Summary Report" for January 1 through September 2, 2008, showing income and expenses for the period.

On September 16, 2008, Staff filed a response to Mount Tipton's filing, stating that Staff had reviewed Mount Tipton's filing, that Mount Tipton had failed to file the balance sheet required, and that Staff's recommendations are unchanged from what was included in the Staff Report.

On September 18, 2008, in the OSC Docket, Mount Tipton filed late-filed exhibits with a cover letter addressing the ADEQ sanitary survey report.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

Background

1. Pursuant to a Certificate of Convenience and Necessity ("CC&N") granted in Decision No. 40644 (May 26, 1970), Mount Tipton provides water service to approximately 742 metered customers in the community of Dolan Springs, which is approximately 35 miles northwest of Kingman, in Mohave County, Arizona. The vast majority of Mount Tipton's customers (approximately 697) are residential customers. Mount Tipton also operates a coin-operated, metered standpipe through which water may be purchased at a bulk rate and possesses two hydrants, one of which is used as a standpipe and the other of which is not in use, and a standpipe located at what is known as the Detrital wellsite. Mount Tipton's service area is approximately 11 square miles in size.

2. Mount Tipton is a nonprofit Arizona corporation and was classified as a Class C utility in its last full rate case in 2004.

⁴ See Findings of Fact No. 8.

1 3. Mount Tipton previously was granted an emergency rate increase in Decision No.
 2 66732 (January 20, 2004). In that Decision, the Commission authorized Mount Tipton to charge a
 3 monthly surcharge of \$8.11 per metered customer per month and a surcharge of \$1.20 per 1,000
 4 gallons for standpipe customers for a period of six months or until permanent rates became effective
 5 in its full ratemaking case, whichever came first. In that Decision, the Commission also required
 6 Mount Tipton to post a bond in the amount of \$10 prior to implementing the emergency water
 7 surcharges and to have a performance audit performed, evaluate its findings, and seek appropriate
 8 relief action if necessary. At the time of the emergency rate case, Mount Tipton was \$58,580 in
 9 arrears for operating expenses; had depleted its U.S. Department of Agriculture reserve accounts for
 10 three separate loans from the Rural Development Authority to pay overdue Water Infrastructure and
 11 Finance Authority of Arizona ("WIFA") loan payments;⁵ had expenses that exceeded its unadjusted
 12 revenues by approximately \$2,300 per month; owed significant back property taxes, a substantial
 13 portion of which were due to back taxes unpaid by Dolan Springs Water Company, Inc. when Mount
 14 Tipton purchased it in late 2001;⁶ had recently failed in its attempts to form a water improvement
 15 district, at substantial expense; had just seen the election of an entirely new Board and the departure
 16 of the consultant/manager who had operated Mount Tipton during the failed attempt to form the
 17 water improvement district;⁷ and had recently cut its staff to only two full-time employees.

18 4. Mount Tipton's current rates were authorized by the Commission in Decision No.
 19 67162 (August 10, 2004). In that Decision, among other things, the Commission required Mount
 20 Tipton to include a provision in its tariff for the flow-through of all appropriate state and local taxes;
 21 to secure and meter all of its standpipes and charge its tariffed rates for all standpipe usage; to deposit
 22 all hook-up fees ("HUFs") collected in a separate, interest-bearing trust account and to use those
 23 HUF funds only for purposes of paying for off-site facilities⁸ or repaying loans obtained for the

24 ⁵ Mount Tipton's consultant/manager had ceased making payments on the WIFA loan starting in September 2003.

25 ⁶ The Commission authorized Mount Tipton to purchase Dolan Springs in Decision No. 64287 (December 28, 2001).
 The Decision also authorized Mount Tipton to obtain a WIFA loan of \$880,000 to fund the purchase.

26 ⁷ During the course of this individual's employment with Mount Tipton, from November 2002 to November 2003, he
 was paid a salary of \$30,000 plus consulting fees in excess of \$100,000.

27 ⁸ The HUF Tariff approved in Decision No. 67162 contains the following definition:

28 "Off-Site Facilities" means wells, storage tanks and related appurtenances necessary for proper
 operation, including engineering and design costs. Off-Site Facilities may also include booster pumps,
 pressure tanks, transmission mains and related appurtenances necessary for proper operation, if these

1 installation of off-site facilities; to submit to the Commission quarterly HUF reports; to reduce its
 2 water loss to 10 percent or less within 18 months after the Decision;⁹ and to comply with Decision
 3 No. 66732's requirement for a performance audit. The Commission also found that Mount Tipton
 4 had become current on its 2002 Mohave County franchise taxes and property taxes and had a
 5 payment schedule in place to bring its 2003 Mohave County franchise taxes and property tax
 6 arrearages current. The Decision did not speak to tax arrearages for prior years.

7 5. In December 2004, Staff filed a Complaint¹⁰ against Mount Tipton for failing to
 8 provide compliance items that Decision No. 67162 required to be produced within the first few
 9 months after the effective date of the Decision. The Complaint remained open over a period of
 10 months as Staff allowed Mount Tipton to come into compliance and was dismissed by Procedural
 11 Order on August 9, 2005, upon a Staff motion for dismissal, because Mount Tipton had made the
 12 filings necessary to come into compliance.

13 6. On September 5, 2007, in Docket No. W-02105A-07-0510 ("OSC Docket"), Staff
 14 filed a Complaint and Petition for an Order to Show Cause against Mount Tipton for failure to
 15 comply with Commission rules and regulations.¹¹ Decision No. 69913, issued on September 27,
 16 2007, ordered Mount Tipton to appear and show cause, at a time and place designated by the Hearing

17 facilities are not for the exclusive use of the Applicant and these facilities will benefit the entire water
 18 system.

19 ⁹ The Decision found that Mount Tipton's water loss during the test year had been 19.42 percent.

20 ¹⁰ The December 2004 Complaint was assigned to Docket No. W-02105A-04-0880.

21 ¹¹ Specifically, the counts of the Complaint alleged that Mount Tipton had:

22 1. Failed to file quarterly reports on quantity of water pumped and sold each month in violation of
 Decision No. 67162;

23 2. Failed to provide verification that its water loss had been reduced to less than 10 percent within 18
 months after the effective date of Decision No. 67162, or that any water loss analysis had been completed, in violation of
 24 that Decision;

25 3. Failed to file a detailed cost analysis or, in the alternative, to demonstrate that its water loss was reduced
 to less than 10 percent, in violation of Decision No. 67162;

26 4. Failed to file its quarterly hook-up fee report due on July 15, 2007, in violation of Decision No. 67162;

27 5. Failed to provide evidence that a performance audit had been performed, that the findings of the audit
 were evaluated, and that appropriate relief was sought, in violation of Decision Nos. 66732 and 67162;

28 6. Failed to file its 2005 utility annual report as prescribed by the Commission and failed to submit its
 2006 annual utility report, in violation of A.R.S. § 40-221;

7. Failed to submit the annual report on its hook-up fee account, which was due on July 15, 2007, in
 violation of Decision No. 60988; and

8. Had maximum contaminant level exceedances and failed to provide the appropriate monitoring and
 reporting to allow ADEQ to determine whether Mount Tipton was delivering water that met the water quality standards of
 the A.A.C., in violation of A.A.C. R14-2-407(C)'s requirement that each utility supply a satisfactory and continuous level
 of service.

1 Division, to defend why its actions do not represent a violation of Decision No. 67162, Decision No.
 2 66732, A.R.S. § 40-221, Decision No. 60988, and A.A.C. R14-2-407(C) and why other relief deemed
 3 appropriate by the Commission should not be ordered. Several procedural conferences and a March
 4 20, 2008, evidentiary hearing have been held in the OSC Docket, which is still pending. In January
 5 2008, upon a motion from Staff, Counts 1-3 and 5-7 of the Complaint were dismissed, and Count 4
 6 was amended.¹² A Procedural Order was issued in the OSC Docket on September 9, 2008, ordering
 7 Mount Tipton to make several late-filed exhibit filings (R-4, R-5, R-6, and R-7) that it had failed to
 8 make since it was originally ordered to do so in May 2008; requiring Mount Tipton to file a response
 9 to the August 2008 ADEQ sanitary survey report; requiring Staff to review and respond to Mount
 10 Tipton's filings by October 30, 2008; and allowing Mount Tipton to file any response to Staff's filing
 11 by November 10, 2008. On September 18, 2008, in the OSC Docket, Mount Tipton made a filing
 12 including the information required for late-filed exhibits R-4, R-5, R-6, and R-7 and, as to the ADEQ
 13 sanitary survey report, a request to file quarterly reports, starting on January 1, 2009, showing the
 14 progress made to address the deficiencies identified therein by ADEQ. Mount Tipton also stated that
 15 it has hired additional staff to help with meter readings and day-to-day pump operations to free up its
 16 Field Operator's time to allow the Field Operator to address the items listed by ADEQ and has hired
 17 a part-time employee with a Water One license, who will also help with repairs and testing. Mount
 18 Tipton also stated that it currently has 752 active metered customers. Finally, Mount Tipton stated
 19 the following:

20 We as a company believe we are on the right track as to getting this
 21 company back on its feet and are very proud of the strides that have been
 22 taken not only by the board members but also the employees to see that
 our goals are accomplished. We are very aware of the lapses in the past
 and hope to remedy them as soon as possible.

23 7. At the hearing in this docket, Staff and Mount Tipton were asked, in light of the new
 24 ADEQ sanitary survey report and the possibility that additional evidence will need to be obtained in
 25 the OSC Docket, to state their respective positions on combining the evidentiary records from this
 26 docket and the OSC Docket so that all of the evidence in each could be considered in the other,

27 _____
 28 ¹² Count 4 was amended to reflect that Mount Tipton had not handled the HUF account as ordered by Decision No. 67162, in violation of that Decision.

1 although the dockets would not be consolidated. Mount Tipton did not have any objection and
2 generally expressed support for the idea, and Staff expressed concern only as to whether delay in this
3 docket would result.

4 8. On August 26, 2008, a Procedural Order was issued ordering that the complete
5 evidentiary record in the OSC Docket, as it existed then and as it develops in the future until such
6 time as a final decision is rendered in this docket, shall be considered to be part of the evidentiary
7 record in this docket and may be considered in rendering a decision herein, although the dockets
8 themselves are not consolidated.

9 9. Since November 2007, the Mount Tipton Board has had three different Presidents¹³
10 and a 100 percent turnover in its membership. In addition, Mount Tipton has terminated its office
11 manager, eliminated the office manager position in favor of an office clerk position, and replaced its
12 Certified Operator.¹⁴

13 **Emergency Rate Application**

14 10. On May 23, 2008, Mount Tipton filed with the Commission an application requesting
15 emergency rate relief to increase its cash flow so as to cover operating expenses and increase water
16 availability to its customers. Mount Tipton specifically requested an emergency rate increase of
17 \$10.00 per customer per month. Mount Tipton did not request an increase to any of its commodity
18 charges, including that for its standpipes.

19 11. The proposed increase would result in a 52.6 percent increase over the minimum
20 monthly customer bill of \$19.00. According to Staff, it would increase the typical residential
21 customer's monthly bill by approximately 29.57 percent.

22 12. Mount Tipton provided notice of the application and hearing, as required by
23 Procedural Order, to all of its metered customers by First Class U.S. Mail on August 4, 2008, and
24 through posting of notice in its office and at its standpipes on July 21, 2008. In addition, notice was
25 posted, on July 21, 2008, at the local post office, bank, grocery store, convenience store, Veterans of
26

27 ¹³ The three different Presidents have been Ed Bartlett, Russ Jacoby, and John Janik.

28 ¹⁴ Mr. Janik testified that Mount Tipton's certified operator quit when Mount Tipton went on black flag and Mr. Janik required him to answer to a supervisor. (Tr. at 85, lines 24-25.) Mr. Janik testified that Mount Tipton is now working with a different certified operator, Ron Raymond. (Tr. at 88, lines 3-5.)

1 Foreign Wars Post, American Legion Post, and Wishing Well Restaurant and Bar.

2 13. The Commission received 11 customer comments concerning the application, eight of
3 which were in opposition, and three of which were in support. Of those in opposition, the concerns
4 voiced were that the \$10 surcharge would be a hardship to those on fixed incomes, that the current
5 minimum bill of approximately \$20 per month is excessive when no water is actually used, that the
6 work that was to have been done following the last rate case was never done, that the company is
7 unable to manage the water system and/or to handle the money appropriately, and that the surcharge
8 should be based on water usage rather than a flat monthly surcharge. Among the supporters, one
9 expressed concern that the \$10 surcharge might not be sufficient to make needed repairs and
10 improvements, one stated that the surcharge is necessary for repairs and replacement parts and should
11 last for one year, and one expressed support on condition that the money be placed into an escrow
12 account to be used only for new equipment and system repairs.

13 14. On August 25, 2008, a full evidentiary hearing on the application was held before a
14 duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona.
15 Mount Tipton was represented by Mr. Janik, who was authorized to represent Mount Tipton before
16 the Commission by a resolution filed in the OSC Docket on February 13, 2008. Staff was
17 represented by counsel. Both Mount Tipton and Staff presented evidence and testimony at the
18 hearing. Mr. Janik testified on behalf of Mount Tipton, and Ms. Dorothy Hains and Mr. Charles
19 Myhlhousen testified on behalf of Staff. No members of the public appeared to provide public
20 comment.

21 15. According to its application, Mount Tipton needs to complete \$10,838 in repairs
22 required by ADEQ; needs to complete \$300 in improvements required by the Bureau of Land
23 Management ("BLM"); and needs to complete \$10,524 in system repairs and upgrades. Mount
24 Tipton also asserts in its application that it has recently completed \$16,318 in repairs, of which
25 \$10,399 is still owed to vendors. Mount Tipton also stated that it must reimburse its HUF account for
26 approximately \$36,000 in HUFs that were spent inappropriately and that it needs an increase due to
27 increasing costs of electricity, propane, telephone service, and gasoline. At hearing, Mr. Janik
28 testified that BLM has determined that the improvements referenced above do not need to be made.

1 Thus, Mount Tipton's application, as modified due to Mr. Janik's testimony related to the BLM
2 requirements, would bring Mount Tipton's need to \$31,761 for system repairs and upgrades and
3 approximately \$36,000 to reimburse Mount Tipton's HUF account. Mount Tipton's application
4 included receipts and invoices supporting most of the repairs that had already been completed and
5 also included a portion of a letter on Mohave County Board of Supervisors letterhead stating that
6 Mount Tipton owes close to \$78,000 in back taxes that cannot be forgiven.

7 16. At the hearing, Mr. Janik testified that, contrary to what the application states, Mount
8 Tipton needs to complete approximately \$198,000 in repairs and improvements to its system. Mr.
9 Janik provided a list of the items to be completed with the estimated costs therefor. Mr. Janik did not
10 provide any documentation to support the estimated costs on the list of items to be completed, at least
11 one of which has a significantly higher estimated cost on the list than it did on the application. When
12 asked why the estimated cost on the list for replacing galvanized pipe at well sites (\$25,000) greatly
13 exceeds the estimated cost on the application (\$7,500) and the price previously paid for such work
14 (approximately \$1,500 for one well), Mr. Janik stated that he believes the higher estimate is correct,
15 as it was provided by Mount Tipton's field manager and vice president, as opposed to Mount
16 Tipton's former office manager and a vendor in whom Mr. Janik expressed a lack of faith. (Tr. at 79,
17 line 19 through Tr. at 83, line 4.) Mr. Janik also stated that he signed the application, which was
18 prepared by the former office manager, because at the time he believed that everything was "on the
19 up-and-up" and that "signing it was just a formality." (Tr. at 80, lines 17-20.)

20 17. At the hearing, Mr. Janik testified that Mount Tipton's liability to Mohave County for
21 back taxes actually exceeds the \$78,000 mentioned in the Mohave County Board of Supervisors letter
22 included with the application. Mount Tipton subsequently filed a late-filed exhibit showing that
23 Mount Tipton's back tax liability is \$84,559.88 and is attributable to tax years 1976-1997, 2002, and
24 2004-2007. The late-filed exhibit establishes that the original tax liability accounts for \$67,117.77 of
25 that total, while the remaining \$17,442.11 represents interest, fees, and penalties.

26 18. Mount Tipton's former office manager testified in the OSC Docket that Mount Tipton
27 has misspent approximately \$39,863.14 in HUFs. (OSC Tr. at 73, lines 1-20.) According to Mount
28 Tipton's late-filed exhibit filing of September 18, 2008, Mount Tipton actually collected

1 approximately \$41,200 in HUFs between August 11, 2004, and December 6, 2007, and spent
2 approximately \$40,363.04 of that money between January 31, 2005, and October 6, 2007. The filing
3 also showed that Mount Tipton has collected HUFs of \$700 from some customers although its lowest
4 authorized HUF is \$800. Staff's analysis of that filing is due on October 30, 2008, in the OSC
5 Docket, and should provide insight as to the extent to which the HUF funds have been spent on items
6 other than "off-site facilities." In spite of the application's mention of \$36,000 in HUFs that may
7 need to be reimbursed to the HUF account, Mr. Janik testified at the hearing that he had just learned
8 of the HUF issue that day and believed that the amount misspent was \$80,000. (Tr. at 66, lines 8-11.)

9 19. Mr. Janik repeatedly testified as to funds that had "disappeared" in the past and
10 suggested that "something fishy" may have occurred. (Tr. at 21, lines 7-11; Tr. at 72, lines 14-21; Tr.
11 at 115, line 11 through Tr. at 116, line 9; Tr. at 120, lines 19-25; Tr. at 128, line 18 through Tr. at
12 129, line 3.) Mr. Janik also questioned the way that Mount Tipton's books have been kept by its
13 accountant and stated that Mount Tipton is in the process of switching from its accountant to a
14 Certified Public Accountant. (Tr. at 42, lines 4-23; Tr. at 114, line 24 through Tr. at 116, line 6.)

15 20. At the hearing, Mr. Janik also provided a list of expenses that had been accrued during
16 a black flag emergency in June 2008, subsequent to the filing of Mount Tipton's application, when its
17 customers lost water service for a period of time. To respond to the black flag emergency, Mount
18 Tipton transferred \$12,120 in U.S. Department of Agriculture reserve funds, of which \$9,473.67 was
19 spent for parts and labor, water hauling, overtime wages, gasoline, and mileage reimbursement.
20 These expenses were not reflected in the application or the Staff Report.

21 21. In the Staff Report, Staff stated that Mount Tipton has past due accounts payable, not
22 including property taxes, of \$55,288. Staff also stated that Mount Tipton's past due property taxes
23 total only \$31,544.¹⁵ Staff also determined that Mount Tipton needs repairs and maintenance with a
24 total cost of \$62,888 and needs to have an emergency contingency fund of \$26,032. Thus, Staff
25 determined that Mount Tipton needs funds totaling \$175,751.¹⁶ Mount Tipton's monthly profit and
26 loss statements for January 2008 through May 2008, as reflected in the Staff Report, show average

27
28 ¹⁵ It is unclear whence this figure originated, although Staff stated that it had come from Mount Tipton.

¹⁶ Adjusting this figure to reflect an accurate amount for tax arrearages, Mount Tipton's need becomes \$228,767.88.

1 operating income of \$1708.40 per month, not taking into account Mount Tipton's past due accounts
2 payable.

3 22. Staff determined, after reviewing the emergency rate application, Mount Tipton's past
4 management practices, and Mount Tipton's available financial information, that Mount Tipton is
5 unable to pay its current bills, cannot make necessary system repairs, and may not be able to continue
6 service. Staff stated that Mount Tipton's current rates do not provide it sufficient revenue to pay its
7 operating expenses, to enable it to correct its production capacity, and to keep its system operational
8 and that Mount Tipton is not current on its property taxes or accounts payable and cannot make
9 needed repairs and perform required maintenance on the system.

10 23. Mount Tipton's late-filed exhibit "Custom Summary Report" shows that, for January
11 1, 2008, through September 2, 2008, Mount Tipton had net income of (\$50,950.96), not including
12 any payments for back tax liability.

13 24. Although Staff identified \$175,751 in need, Staff recognized that Mount Tipton has
14 requested a surcharge of only \$10 per month per customer, which would gross \$89,040 in a 12-month
15 period,¹⁷ and recommended that Mount Tipton's request be granted. Staff reasoned that the requested
16 amount will be enough to help Mount Tipton until its rates can be adjusted in a permanent rate case
17 decision.

18 25. Staff recommends:

- 19 a. Approval of the application using Mount Tipton's requested rate;
- 20 b. If Mount Tipton's permanent rate case filing is found to be sufficient by July
21 31, 2009, that the interim rate remain in effect until December 31, 2009, or
22 until an order is issued in the permanent rate case, whichever comes first;
- 23 c. If Mount Tipton's permanent rate case filing is not found to be sufficient by
24 July 31, 2009, that the interim rate remain in effect only until July 31, 2009;
- 25 d. That the interim rate be subject to refund pending the decision resulting from
26 the permanent rate case required to be filed in this proceeding;

27
28 ¹⁷ This figure is based on Mount Tipton's application, which stated that Mount Tipton has 742 active metered customers.

- 1 e. That Mount Tipton post a bond or letter of credit with the Commission in the
2 amount of \$89,040 prior to implementing the emergency rate increase
3 authorized in this proceeding;
- 4 f. That Mount Tipton be ordered to file with Docket Control, as a compliance
5 item in this docket, within 30 days after this Decision, a revised rate schedule
6 reflecting the emergency rate increase;
- 7 g. That Mount Tipton notify its customers of the revised rate and its effective
8 date, in a form acceptable to Commission Consumer Services, by means of an
9 insert in Mount Tipton's next regularly scheduled billing;
- 10 h. That Mount Tipton file a full permanent rate case no later than April 30, 2009,
11 using calendar year 2008 as its test year;
- 12 i. That before the emergency rate becomes effective, Mount Tipton file its 2008
13 annual report with the Corporations Division and be in good standing;
- 14 j. That Mount Tipton pay its past due property taxes before a decision is issued
15 in the subsequent full permanent rate case or within 12 months after a decision
16 in this case, whichever comes first; and
- 17 k. That Mount Tipton be required to develop an additional water source before
18 adding storage.

19 26. Mr. Janik testified at the hearing that it is not possible for Mount Tipton to obtain
20 either a performance bond or a letter of credit, because of its poor financial condition. Mr. Janik
21 testified that Mount Tipton has contacted several financial institutions about obtaining either of these,
22 and that the financial institutions "laughed at" Mount Tipton. Mr. Janik testified that he has proposed
23 at a public meeting that the surcharge money be deposited into a separate bank account and that the
24 ratepayers form an oversight committee to authorize expenditures, to ensure that the funds are spent
25 only on the water system. Mr. Janik further testified that Ms. Carter, Mount Tipton's Treasurer, is
26 adamant that the money go directly into the water system.

27 27. Staff testified that, in spite of Mr. Janik's testimony as to Mount Tipton's inability to
28 obtain either a performance bond or a letter of credit, Staff stands by its recommendation that one of

1 them be required, in the amount of \$89,040, which is the full amount of revenue expected to be
2 generated by the emergency surcharge. Staff explained that its recommendation is intended to protect
3 Mount Tipton's customers, in light of Mount Tipton's history of noncompliance with Commission
4 requirements, particularly as described in the OSC Docket matter. Staff stated that the purpose of the
5 bond or letter of credit is to ensure that there is money available to refund to ratepayers if the
6 Commission determines in the permanent rate case that the emergency surcharge should not have
7 been collected. Staff added that it also does not want Mount Tipton to believe that the emergency
8 surcharge funds could be used to pay back the HUFs, which Staff believes would be an improper use
9 of the surcharge funds.

10 28. Regarding whether it would be possible for Mount Tipton to continue operating if it is
11 not granted the emergency surcharge, Mr. Janik testified that the emergency surcharge is needed to
12 help Mount Tipton continue providing water to its customers. Mr. Janik testified that he does not
13 believe that Mount Tipton will be able to continue serving its customers if the emergency rate
14 increase is not granted. Mr. Janik also stated that "if we don't get some money to do the necessary
15 repairs, we might as well shut the water company down." (Tr. at 54, lines 23-25.) Mr. Janik testified
16 that Mount Tipton needs to replace water meters, has leaky water tanks, has a compressor at the
17 Chambers Well that needs to be replaced, needs to put the wells on automatic control, needs a
18 chlorine filter injection system, needs to replace galvanized pipe in all the wells, and needs to clean
19 its tanks, none of which Mount Tipton can afford to do.

20 29. Staff stated in the Staff Report that Mount Tipton's "ability to maintain service is in
21 serious doubt" and that "Mount Tipton's condition satisfies the criteria to qualify for emergency
22 rates." Staff also stated that Mount Tipton "is not currently providing adequate service, and there is
23 no reasonable expectation that it could begin to provide adequate service at existing rates.
24 Implementation of the requested emergency rates may prevent further deterioration in the condition
25 of this water system and the Company's finances." At hearing, Staff elaborated that Mount Tipton's
26 failure to provide adequate service is due to its inadequate production capacity. Staff estimates that
27 Mount Tipton currently has almost 200 more customers than it can adequately serve with its current
28 system during times of peak water demand. (Tr. at 143, line 15 through Tr. at 145, line 22.)

1 30. Staff testified that it is not ready to amend its position on Mount Tipton's compliance
2 with ADEQ requirements in light of the ADEQ sanitary survey report, as the report had not yet been
3 sent into ADEQ's compliance section, and ADEQ had not yet changed Mount Tipton's compliance
4 status in its system. Staff stated that such a change would take at least three weeks and that the final
5 compliance report could differ from the sanitary survey report. Staff further stated that the ADEQ
6 sanitary survey report maybe should not have a bearing on this matter, but should affect the outcome
7 in the OSC Docket.

8 31. The ADEQ sanitary survey report shows that Mount Tipton lost more than 12 million
9 gallons of water between June 2007 and June 2008.¹⁸ Mr. Janik testified that he believes Mount
10 Tipton's water loss is due to old meters that no longer operate correctly and that he has received
11 reports of individuals using 10,000 gallons of water per month and only paying the minimum charge
12 because their meters are not registering the water used. Mr. Janik also stated that the average life of a
13 meter is five years and that he personally has a 15-year-old meter at his house. Mr. Janik testified
14 that Mount Tipton needs to replace its water meters and that he would like to purchase 100 new water
15 meters at an expense of approximately \$3,000, replace 100 of the existing meters, send the 100
16 removed water meters back to the manufacturer to be refurbished, and so on until all of the meters
17 have been replaced with either new or refurbished meters.

18 32. Mr. Janik also testified that Mount Tipton needs to make repairs to put its wells back
19 on automatic operation. Mr. Janik testified that currently, if there is a power fluctuation, someone
20 must go out and manually reactivate each well because the wells turn off with each fluctuation. Mr.
21 Janik testified that there are a lot of power fluctuations and outages in Dolan Springs and that the lack
22 of automatic operation poses a problem when the fluctuations or outages occur during the night. This
23 results in the wells' being down all night long and being unable to replenish. Mr. Janik stated that
24 Mount Tipton just doesn't have the money that it needs to make these necessary repairs, which he
25 estimated would cost \$13,500.

26 33. At the hearing, Staff stated that it did not believe it would be appropriate for Staff to

27 ¹⁸ Water pumped is reported as 51,174,765, and water sold is reported as 39,122,488. The difference, 12,052,277
28 equates to 23.55 percent of water pumped or 30.8 percent of water sold. Although some of the monthly numbers appear
to be questionable, the overall figures do suggest that Mount Tipton continues to experience excessive water loss.

1 review and evaluate the new numbers provided by Mount Tipton at hearing, and to revise its
2 recommendations based on those numbers, because Staff does not verify the numbers provided in an
3 emergency rate application. Staff stated that it based its opinion as to how much Mount Tipton needs
4 on information provided by Mount Tipton as to past due accounts payable, past due property taxes,
5 and repairs that need to be done. Staff stated that the higher back tax liability figure is probably
6 correct and suggested that Mount Tipton could use surcharge funds to pay operating and maintenance
7 expenses and repairs, which would then free up funds to perhaps pay back taxes. Staff also stated
8 that it believes Mount Tipton can pay its back taxes within the timeframe recommended by Staff,
9 with the revenue generated through the emergency rate surcharge and through replacing meters so
10 that meter readings are correct.

11 34. When asked why it did not recommend a greater surcharge, to generate revenue closer
12 to the need identified in the Staff Report, Staff stated that Staff is attempting to get Mount Tipton
13 revenue to help pay off its past due accounts and keep its system up and running, not to make long-
14 term improvements. Staff further stated that money for long-term improvements could be addressed
15 in the permanent rate case.

16 35. When asked whether Mount Tipton should impose a surcharge through a commodity
17 charge rather than through a flat monthly fee, Staff stated that it recommends only the flat monthly
18 fee because it places an equal burden on all customers. Staff elaborated that “[c]ustomers use the
19 system even though they may not use the same amount of water.” (Tr. at 164, lines 19-20.) Staff
20 also pointed out that Mount Tipton has testified that there are problems with meter readings and that
21 they are not all correct, which Staff believes makes the flat rate a fairer and more reasonable way of
22 assessing a surcharge. Staff also stated that a flat rate ensures a steady revenue stream, while a
23 commodity charge could fluctuate on a monthly basis and would make it more difficult for Mount
24 Tipton to plan.

25 36. Staff testified that it did not have any recommendations as to specifically how the
26 emergency surcharge money should be spent, beyond that it should be used to keep the system up and
27 running and to provide water to its customers, but that it would be reasonable to impose conditions on
28 how the funds are deposited and how the decisions are made to spend the funds, in light of Mount

1 Tipton's prior problems with managing funds.

2 37. When asked whether it would be appropriate to appoint an interim operator for Mount
3 Tipton, Staff stated that it does not currently support the appointment of an interim operator and that
4 it would be more appropriately dealt with in the OSC Docket. (See Tr. at 146, line 22 through Tr. at
5 147, line 7.) Staff further testified that it does not believe an interim operator is needed, judging from
6 Mount Tipton's testimony at the hearing. (Tr. at 160, lines 4-7.)

7 38. As described in Arizona Attorney General Opinion No. 71-17 (May 25, 1971), it is
8 appropriate to grant interim rates as an emergency measure when (1) sudden change brings hardship
9 to a company, (2) the company is insolvent, (3) the condition of the company is such that its ability to
10 maintain service pending a formal rate determination is in serious doubt, or (4) the Commission will
11 be unable to grant permanent rate relief within a reasonable time. In *Scates v. Arizona Corporation*
12 *Commission*, the Arizona Court of Appeals recognized this standard and, additionally, that (1) a bond
13 must be posted to protect the company's customers and allow for refund in the event that the interim
14 rates are excessive, and (2) the granting of interim rates must be followed by a full rate case in which
15 just and reasonable rates are established after the fair value of the company's property is
16 determined.¹⁹ The *Scates* test was cited with approval in *Residential Utility Consumer Office v.*
17 *Arizona Corporation Commission*, 20 P.3d 1169, 1173 (Ariz. App. 2001) ("*Rio Verde*").

18 39. The evidence establishes that Mount Tipton's ability to maintain service pending a
19 formal rate determination is in serious doubt. Thus, an emergency exists that makes it appropriate to
20 grant an interim rate adjustment to ensure that Mount Tipton can maintain service until a
21 determination can be made in a permanent rate case.

22 40. Pursuant to *Scates*, a bond must be posted to protect Mount Tipton's customers and to
23 allow for a refund if the interim rates are later determined to be excessive. The Commission often
24 finds that a bond in a *de minimis* amount is appropriate, such as it did in Mount Tipton's last
25 emergency rate case. In this case, however, in light of the evidence of past mismanagement of funds
26 and the turnover in Mount Tipton's Board, it is appropriate to require a bond in a greater amount.

27

28 ¹⁹ 578 P.2d 612, 616 (Ariz. App. 1978).

1 Staff has recommended that a bond of \$89,040 be required, which represents the entire anticipated
2 amount of the annual increase in Mount Tipton's revenue, based on its application. In light of Mount
3 Tipton's testimony that it would be unable to obtain such a bond, however, we believe that it is more
4 appropriate to require a bond or letter of credit in the amount of \$20,000, as this reduced amount will
5 still afford a measure of protection to Mount Tipton's customers and is more likely to be attainable by
6 Mount Tipton.

7 41. We also find that it is appropriate to require Mount Tipton to deposit the funds
8 generated through the interim emergency surcharge into a separate interest-bearing bank account and
9 to prescribe how the funds may be used. Furthermore, we believe that it is appropriate to require
10 Mount Tipton to file monthly reports with the Commission, in this docket and the OSC docket, by the
11 15th of each month, showing for the previous month and on a running basis the amount of funds
12 generated through the interim rate increase and any expenditures of the funds made (including date,
13 item or service purchased, and amount paid) and including a copy of the most recent bank statement
14 for the separate, interest-bearing bank account into which the funds are deposited.

15 42. Mount Tipton should be authorized to use the funds for the following purposes only:
16 (1) to pay its past due accounts; (2) to make repairs to its system; (3) to replace galvanized pipe as
17 required by ADEQ; (4) to make other system improvements required or recommended by ADEQ; (5)
18 to purchase and install new meters; (6) to refurbish and reinstall existing meters; and (7) to have its
19 books and accounts audited by an Arizona Certified Public Accountant, preferably an accountant
20 with a background in forensic accounting.

21 43. As A.A.C. R14-2-103(B)(11)(d) provides the Commission 270 days from a finding of
22 sufficiency to render a final order in a permanent rate case for a Class C utility, we find that Staff's
23 recommendation in Findings of Fact No. 25(b) should be modified to allow the interim rate to remain
24 in effect until an order is issued in the permanent rate case.

25 44. Finally, it is in the public interest to require Mount Tipton (1) to engage in discussions
26 with Mohave County (a) to determine whether it is possible to have the amount of its back tax
27 liability attributable to interest, penalties, and fees waived or otherwise forgiven and (b) to determine
28 whether it is possible to establish a payment plan for the amount of back tax liability that cannot be

1 waived or otherwise forgiven; and (2) to report back to the Commission on the result of such
2 discussions. In light of the large amount of back tax liability and the amount of repairs and
3 improvements that Mount Tipton needs to make to its system, we will not adopt Staff's
4 recommendation found in Findings of Fact No. 25(j). Compliance with any payment plan arranged
5 with Mohave County can be addressed in the permanent rate case and/or the OSC Docket.

6 45. Staff's recommendations in Findings of Fact No. 25, as modified above, are
7 reasonable and should be adopted.

8 46. The Commission is very concerned with the existing and continued problems at the
9 Mount Tipton Water Co. While an interim operator is not a necessary step at this point, the
10 Commission will provide an interval for Mount Tipton to come into compliance and will explore this
11 option should the Company fail to fulfill its obligations.

12 CONCLUSIONS OF LAW

13 1. Mount Tipton is a public service corporation within the meaning of Article XV of the
14 Arizona Constitution and A.R.S. §§ 40-250 and 40-251.

15 2. The Commission has jurisdiction over Mount Tipton and the subject matter of the
16 application.

17 3. Notice of the application was provided as prescribed by law.

18 4. Mount Tipton is facing an "emergency" within the definition set forth in Arizona
19 Attorney General Opinion No. 71-17, as discussed and approved in the *Scates* and *Rio Verde* cases
20 cited herein.

21 5. The standard for approval of a request for interim rate relief requires the existence of
22 an emergency, the posting of a bond or letter of credit by the applicant, and the subsequent filing of a
23 permanent rate application.

24 6. Approval of Mount Tipton's application for emergency interim rate relief, as
25 described herein, is consistent with the Commission's authority under the Arizona Constitution,
26 applicable statutes, and applicable case law.

27 7. Mount Tipton's requested emergency interim rate relief is just and reasonable and
28 should be collected by means of adding a \$10.00 surcharge to each metered customer's monthly bill

1 upon Mount Tipton's meeting the conditions precedent required in the ordering paragraphs below.

2 **ORDER**

3 IT IS THEREFORE ORDERED that the application of Mount Tipton Water Company, Inc.
4 for an emergency interim surcharge of \$10.00 per month per metered customer is hereby approved, as
5 conditioned in the ordering paragraphs below.

6 IT IS FURTHER ORDERED that the emergency interim surcharge shall not become effective
7 and Mount Tipton shall not bill for or collect the emergency interim surcharge until the first day of
8 the month after Mount Tipton has (1) posted a performance bond or irrevocable sight draft letter of
9 credit in the amount of \$20,000 with the Commission by providing the original of the performance
10 bond or irrevocable sight draft letter of credit to the Commission's Business Office and filing copies
11 with Docket Control, as a compliance item in this docket; and (2) filed a Certificate of Good Standing
12 as a compliance item in this docket to establish that it has filed its 2008 annual report and come into
13 good standing with the Commission's Corporations Division.

14 IT IS FURTHER ORDERED that Mount Tipton shall file, as a compliance item in this
15 docket, within 30 days after the effective date of this Decision, a revised rate schedule reflecting the
16 emergency interim surcharge.

17 IT IS FURTHER ORDERED that Mount Tipton shall notify its customers of the emergency
18 interim surcharge and its effective date, in a form acceptable to the Commission's Consumer
19 Services, by means of an insert in Mount Tipton's next regularly scheduled billing after the
20 emergency interim surcharge becomes effective.

21 IT IS FURTHER ORDERED that Mount Tipton shall file a permanent rate case application
22 with the Commission no later than April 30, 2009, using calendar year 2008 as its test year.

23 IT IS FURTHER ORDERED that, if Mount Tipton's permanent rate case application is found
24 to be sufficient by July 31, 2009, the emergency interim surcharge shall remain in effect until an
25 order is issued in the permanent rate case.

26 IT IS FURTHER ORDERED that, if Mount Tipton's permanent rate case application is not
27 found to be sufficient by July 31, 2009, the emergency interim surcharge shall remain in effect only
28 until July 31, 2009, and Staff shall file an Order to Show Cause to install an interim manager and

1 address any other appropriate remedies.

2 IT IS FURTHER ORDERED that the emergency interim surcharge collected by Mount
3 Tipton is subject to refund pending the decision resulting from the permanent rate case application
4 required by this Decision.

5 IT IS FURTHER ORDERED that Mount Tipton shall deposit the funds generated by the
6 emergency interim surcharge into a separate, interest-bearing bank account.

7 IT IS FURTHER ORDERED that Mount Tipton shall file with the Commission's Docket
8 Control, as a compliance item in this docket and Docket No. W-02105A-07-0510, by the 15th of each
9 month, a monthly report showing for the previous month and on a running basis the amount of funds
10 generated through the emergency interim surcharge and any expenditures of those funds made,
11 including date, item or service purchased, and amount paid. Mount Tipton shall include with each
12 report a copy of the most recent bank statement for the separate, interest-bearing bank account into
13 which the funds are deposited.

14 IT IS FURTHER ORDERED that Mount Tipton shall use the funds generated by the
15 emergency interim surcharge approved herein only (1) to pay its past due accounts; (2) to make
16 repairs to its system; (3) to replace galvanized pipe as required by the Arizona Department of
17 Environmental Quality; (4) to make other system improvements required or recommended by the
18 Arizona Department of Environmental Quality; (5) to purchase and install new meters; (6) to
19 refurbish and reinstall existing meters; and (7) to have its books and accounts audited by an Arizona
20 Certified Public Accountant, preferably an accountant with a background in forensic accounting.

21 IT IS FURTHER ORDERED that Mount Tipton shall engage in discussions with Mohave
22 County (1) to determine whether it is possible to have the amount of its back tax liability attributable
23 to interest, penalties, and fees waived or otherwise forgiven and (2) to determine whether it is
24 possible to establish a payment plan for the amount of back tax liability that cannot be waived or
25 otherwise forgiven.

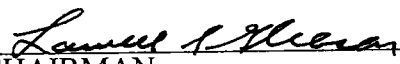
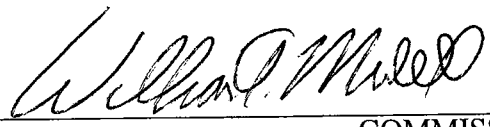
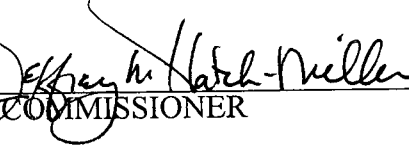


26 IT IS FURTHER ORDERED that Mount Tipton shall file with the Commission's Docket
27 Control, by January 5, 2009, in this docket and Docket No. W-02105A-07-0510, a document
28 describing the outcome of its discussions with Mohave County. If Mount Tipton has succeeded in

obtaining a waiver or forgiveness of any back tax liability or has entered into a payment plan with Mohave County for its back tax liability, Mount Tipton shall include in its filing the amount waived or forgiven, the amount of back tax liability remaining, and a copy of the payment plan.

IT IS FURTHER ORDERED that Mount Tipton shall develop an additional water source before it adds more storage to its system.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

 CHAIRMAN	 COMMISSIONER
 COMMISSIONER	 COMMISSIONER
	 COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 23rd day of Oct., 2008.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
SNH:db

SERVICE LIST FOR:

MOUNT TIPTON WATER CO., INC.

DOCKET NO.:

W-02105A-08-0262

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